

## Social Security Administration

## § 404.405

primary insurance amount is determined under §§ 404.251(a)(1), 404.251(b)(1), or 404.252(b), the monthly maximum during the second entitlement is determined under the following rules:

(1) If the primary insurance amount is determined under §§ 404.251(a)(1) or 404.251(b)(1), the monthly maximum equals the maximum in the last month of the insured individual's earlier entitlement to disability benefits, increased by any cost-of-living or ad hoc increases since then.

(2) If the primary insurance amount is determined under § 404.252(b), the monthly maximum equals the maximum in the last month of the insured individual's earlier entitlement to disability benefits.

(3) Notwithstanding paragraphs (g)(1) and (g)(2) of this section, if the second entitlement is due to the insured individual's retirement or death, and the monthly maximum in the last month of the insured individual's earlier entitlement to disability benefits was computed under paragraph (d-1) of this section, the monthly maximum is equal to the maximum that would have been determined for the last month of such earlier entitlement if computed without regard for paragraph (d-1) of this section.

[45 FR 1611, Jan. 8, 1980, as amended at 46 FR 25601, May 8, 1981; 48 FR 46148, Oct. 11, 1983; 51 FR 12606, Apr. 14, 1986; 58 FR 64892, Dec. 10, 1993; 62 FR 38450, July 18, 1997; 64 FR 17101, Apr. 8, 1999; 64 FR 57775, Oct. 27, 1999; 65 FR 16813, Mar. 30, 2000]

### **§ 404.404 How reduction for maximum affects insured individual and other persons entitled on his earnings record.**

If a reduction of monthly benefits is required under the provisions of § 404.403, the monthly benefit amount of each of the persons entitled to a monthly benefits on the same earnings record (with the exception of the individual entitled to old-age or disability insurance benefits) is proportionately reduced so that the total benefits that can be paid in 1 month (including an amount equal to the primary insurance amount of the old-age or disability insurance beneficiary, when applicable) does not exceed the maximum family benefit (except as provided in § 404.405

where various savings clause provisions are described).

### **§ 404.405 Situations where total benefits can exceed maximum because of "savings clause."**

The following provisions are *savings clauses* and describe exceptions to the rules concerning the maximum amount payable on an individual's earnings record in a month as described in § 404.403. The effect of a *savings clause* is to avoid lowering benefit amounts or to guarantee minimum increases to certain persons entitled on the earnings record of the insured individual when a statutory change has been made that would otherwise disadvantage them. The reduction described in § 404.403 does not apply in the following instances:

(a)-(m) [Reserved]

(n) *Months after August 1972.* The reduction described in § 404.403(a) shall not apply to benefits for months after August 1972 where two or more persons were entitled to benefits for August 1972 based upon the filing of an application in August 1972 or earlier and the total of such benefits was subject to reduction for the maximum under § 404.403 (or would have been subject to such reduction except for this paragraph) for January 1971. In such a case, maximum family benefits on the insured individual's earnings record for any month after August 1972 may not be less than the larger of:

(1) The maximum family benefits for such month determined under the applicable table in section 215(a) of the Act (the *applicable* table in section 215(a) is that table which is effective for the month the benefit is payable or in the case of a lump-sum payment, the month the individual died); or

(2) The total obtained by multiplying each benefit for August 1972 after reduction for the maximum but before deduction or reduction for age, by 120 percent and raising each such increased amount, if it is not a multiple of 10 cents, to the next higher multiple of 10 cents.

(o) *Months after December 1972.* The reduction described in § 404.403 shall not apply to benefits for months after December 1972 in the following cases: